

APPEAL NO. 022775
FILED DECEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on October 18, 2002. This case was heard at the same time as (Docket No. 1), which was also appealed (and which is decided as Texas Workers' Compensation Commission Appeal No. 022795, decided December 19, 2002). The hearing officer determined that the appellant (claimant) did not sustain a compensable right shoulder injury on _____, and that, because he did not have a compensable injury, the claimant has not had disability. The claimant appeals, asserting that he does have a right shoulder injury and disability, and attaches a statement from a coworker. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

Attached to the claimant's appeal is a document that was not offered into evidence at the hearing. Generally, the Appeals Panel does not consider documents not offered into evidence at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the document attached to the appeal, as the information in that document was clearly known to the claimant prior to the CCH and could have been obtained and presented with the exercise of due diligence by the claimant.

The hearing officer did not err in determining that the claimant did not sustain a compensable right shoulder injury on _____. The issue of whether the claimant sustained a compensable injury was a question of fact for the hearing officer. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer noted that the "case turns on the Claimant's credibility, and he was not credible." When reviewing a hearing officer's decision for factual sufficiency of the evidence, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or

manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no legal basis to overturn the hearing officer's factual finding regarding injury.

Given our affirmance of the hearing officer's injury determination, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge